

FILED & ENTERED

AUG 02 2017

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY bakchell DEPUTY CLERK

**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:

REGGIE LYN BISHOP,

Debtor.

Case No. 2:16-bk-16503-RK

Chapter 7

Adv. No. 2:16-ap-01388-RK

**ORDER POSTPONING RULING ON  
DEFENDANT'S MOTION TO DISMISS  
ADVERSARY COMPLAINT FOR FAILURE  
TO MEET BURDEN OF PROOF UNTIL  
TRIAL**

WILLIE PHELPS,

Plaintiff,

vs.

REGGIE BISHOP,

Defendant.

**Vacated Hearing**

Date: August 15, 2017

Time: 3:00 p.m.

Courtroom: 1675

Pending before the court is the Motion of Defendant Reggie Lyn Bishop to Dismiss Adversary Complaint for Failure to Meet Burden of Proof ("Motion") (Docket No. 84), filed on July 19, 2017. Plaintiff filed an Opposition to the Motion on July 24, 2017

1 (Docket No. 86). Defendant Reggie L. Bishop represents himself. JoAnne E. Belisle,  
2 of the law firm of Campbell & Farahani, LLP, represents Plaintiff Willie Phelps.

3 Having considered the Motion and the Opposition thereto, the court determines  
4 that pursuant to Local Bankruptcy Rule 9013-1(j)(3), oral argument on the Motion is  
5 unnecessary, dispenses with it, vacates the hearing on the Motion noticed for August  
6 15, 2017 at 3:00 p.m. and rules as follows.

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8 Federal Rule of Civil Procedure 12(i) states: "If a party so moves, any defense  
9 listed in Rule 12(b)(1)-(7)---whether made in a pleading or by motion---and a motion  
10 under Rule 12(c ) must be heard and decided before trial unless the court orders a  
11 deferral until trial." This rule is made applicable to this adversary proceeding by Federal  
12 Rule of Bankruptcy Procedure 7012(b). Under these rules, the court has discretion to  
13 postpone a ruling on a motion to dismiss to trial. See O'Connell and Stevenson, *Rutter*  
14 *Group Practice Guide: Federal Civil Procedure Before Trial*, ¶9:273 at 9-112 (2017),  
15 *citing*, Federal Rule of Civil Procedure 12(i).

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17 Defendant in the Motion seeking dismissal of this adversary proceeding contends  
18 that Plaintiff cannot meet its burden of proof in this proceeding, and as such, the court  
19 construes the Motion as one to dismiss for failure to state a claim upon which relief can  
20 be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable here  
21 by Federal Rule of Bankruptcy Procedure 7012(b). Since it appears to the court that the  
22 Motion raises the same arguments that the court would need to decide at trial, pursuant  
23 to Federal Rule of Civil Procedure 12(i), made applicable here by Federal Rule of  
24 Bankruptcy Procedure 7012(b), the court exercises its discretion to postpone its ruling  
25 on the Motion to the time of trial. No trial date is yet set in this adversary proceeding,  
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1 but the court expects to set a trial date at the pretrial conference in this adversary  
2 proceeding now scheduled for August 29, 2017 at 2:00 p.m. No appearances are  
3 required on August 15, 2017.

4 IT IS SO ORDERED.

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25 Date: August 2, 2017



26 Robert Kwan  
27 United States Bankruptcy Judge  
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